

Notice of Application of AS 43.19.010 Art. 4, Sec. 18(c)
To Allow Factor Relief For Certain AS 43.20.072 Taxpayers

The general subject matter of this notice concerns whether certain AS 43.20.072 taxpayers may employ the three-factor modified apportionment formula in place of the two-factor formula otherwise required by AS 43.20.072.

A hypothetical taxpayer is involved in the production of oil or gas from leases or properties within Alaska and in other states and foreign countries. The taxpayer also is engaged in the pipeline transportation of oil or gas in the United States and foreign countries but not in Alaska. AS 43.20.072(c)(2) provides that the taxpayer use a property factor and an extraction factor to apportion income to Alaska. Had the taxpayer been engaged in the pipeline transportation of oil or gas in Alaska, it would be subject to AS 43.20.072(c)(3) and would use the three-factor formula -- property, extraction and sales -- to apportion income to Alaska. The lack of pipeline activity in Alaska results in the use of a different apportionment formula compared to other taxpayers involved in substantially the same worldwide activities but with an Alaska pipeline component.

The department requested a legal opinion from the Alaska Attorney General concerning whether this violated the Commerce Clause of the U.S. Constitution. The Attorney General opined on October 20, 1999 that universal application of the modified apportionment method in this situation could result in multiple taxation of the taxpayer, and in any event the statute discriminates against interstate commerce, and thus the taxpayer, by favoring those taxpayers that invest in Alaska pipelines over those that invest in pipelines in other jurisdictions. The Attorney General further concluded that the department could invoke AS 43.19.010 Art. 4, Sec. 18(c) to modify AS 43.20.072(c)(2) with the inclusion of a sales factor in this situation.

The department will abide by the opinion and allow taxpayers to use the three-factor apportionment formula in these circumstances pursuant to the authority of AS 43.19.010 Art. 4, Sec. 18(c). Accordingly, an AS 43.20.072 taxpayer engaged both in the production of oil or gas from a lease or property in any jurisdiction and in the pipeline transportation of oil or gas in any jurisdiction may use an apportionment formula consisting of extraction, property and sales as provided in AS 43.20.072(d), (e), and (f). An AS 43.20.072 taxpayer that is not engaged in the production of oil or gas from a lease or property in any jurisdiction, or is not engaged in the pipeline transportation of oil or gas in any jurisdiction, is unaffected and shall continue to use the applicable two-factor apportionment formula as provided in AS 43.20.072.

A taxpayer entitled to claim this apportionment factor relief should include a statement with its tax return stating it is being filed under the authority of the October 20, 1999 Attorney General's opinion. Advance filing of a petition with the department requesting specific authority to file the return in this mode is not required. A taxpayer may also file amended returns for all open tax years in the same way. Tax years that are closed pursuant to AS 43.05.275 or a closing agreement may not be opened. The department may also require all affected taxpayers to file in the manner indicated in this notice.

November 19, 1999